IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1490 OF 2006
IN
ARBITRATION PETITION NO. 79 OF 2005

M/s.Indus Engineering Company .. Petitioner
versus
M/s.Indian Oil Corporation Ltd. & ors.. Respondents

...

Mr.Vicky Singh i/b Thakoredas & Madgavkar for the petitioner.

Mr.Gaurav Joshi i/b RMG Law Associates for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 18th January 2007.

P.C.:

1. Heard counsel for the petitioner and the contesting respondent i.e. respondent no.1.

2. This Chamber Summons is taken out for a leave to amend the Arbitration Petition so as to challenge the fresh award dated 12th August 2006 passed by the Arbitral Tribunal after by an order of this court dated dated 22nd November 2005 passed under sectin 34(4) of the Arbitration and

Conciliation Act, 1996 (for short "the Arbitration Act") in Arbitration Petition no.79 of 2005.

3. In a dispute between the petitioner and the respondent no.1, the respondent no.2 - Arbitrator - passed an award dated 17th September 2004. Aggrieved petitioner challenged the said award by filing an Arbitration Petition no.79 of 2005. By an order dated 22nd November 2005, this Court resorted to the provisions of sub-section (4) of section of the Arbitration Act and adjourned the hearing with a view to enable the learned arbitrator to consider the issue no.5 if he came to the conclusion that the delay was not attributable to the petitioner. Thereafter, the learned arbitrator resumed the arbitration proceedings and passed a fresh award on 12th August 2006. By this Chamber Summons, petitioner seeks leave to amend original arbitration petition no.79 of 2005 so as to challenge the fresh award also in the very petition.

4. In my view, leave to amend cannot be granted for more than one reasons. The first reason, which is purely technical is that the award which the petitioner seeks to challenge is dated 12th August

2006. The Arbitration Petition no.79 of 2005 has been filed on 13th December 2004. Amendment if any, to the Arbitration Petition would relate back to the date of the filing of the petition. Allowing of the amendment would mean that the petitioner challenges the award dated 12th August 2006 by a petition which is filed much earlier i.e. 13th December 2004 which cannot be done.

5. Even on merits I am not inclined to allow the amendment. I have perused the award dated 12th August 2006. In my view, the award is a fresh award. Sub-section (4) of section 34 of the Arbitration Act enables a court to adjourn the proceedings to enable the Arbitral Tribunal to have an opportunity to resume the arbitral proceedings or take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. When an order under sub-section (4) of section 34 of the Arbitration Act is passed, the Arbitral Tribunal has two options. The Arbitral Tribunal may after re-consideration come to the conclusion that its original award is correct and needs no modification at its own hands in which case the Arbitral Tribunal may not pass any order or pass

an order confirming the original award. If the original award is confirmed, the Court would be required to consider on merits whether the award needs to be set aside. The second option for the arbitral tribunal is to modity or pass a fresh award so as to eliminate the grounds on which the first award was not sustainable. The Arbitral Tribunal may taking into consideration the observations made by the court in the order under sub-section (4) of section 34 of the Arbitration Act modify its decision and pass a fresh award after hearing the parties. If the fresh award is passed, it is open to the person who is aggrieved by such fresh award to challenge that award by filing a separate petition under sub-section (1) of section 34 of the Arbitration Act. In the present case, I am of the view that the award dated 12th August 2006 is a fresh award. If the petitioner is aggrieved by that award, it is necessary for him to challenge the same by filing of a fresh petition under sub-section (1) of section 34.

6. In the circumstances, the petitioner cannot be allowed to amend the original arbitration petition.

7. For these reasons, Chamber Summons is dismissed.

D.G. KARNIK, J